

April 29 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0616

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

LINDA KAPSA,

Defendant and Appellant.

APPELLANT'S RESPONSE TO  
MOTION TO WITHDRAW AS  
COUNSEL OF RECORD

FILED

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CLERK OF THE SUPREME COURT  
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COMES NOW, Linda K. Kapsa, Appellant herein, and respectfully responds to her appointed counsel's motion to withdraw as counsel of record in this appeal. Appellant agrees with the assertion that the majority of issues regarding her criminal case, the plea agreement, and the sentencing herein, including the legality of the sentence and claims of ineffective assistance of appointed counsel, are post-conviction issues, as the pertinent evidence is not on record.

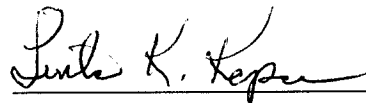
However, the issue is of record involving the conditions that Probation Officer Lisa Hjelmstad set forth in her Pre-Sentence Investigation concerning the number of animals that Appellant should be allowed to possess, which directly contradicts the conditions in the plea agreement that the State agreed to concerning the number of animals that Appellant could possess.

Prosecutor Ingrid Rosenquist, during the Sentencing hearing, states that the "probation officer disagrees with the plea agreement, and in her conditions she put what she is recommending the number be, not what the plea agreement number was." (Transcript of Sentencing Hearing, pp. 114, lines 1-7.) It is apparent that the prosecution, in speaking for the probation officer, was justifying Ms. Hjelmstad's contrary recommendations.

1 This Court recognizes that a plea agreement presupposes fundamental  
2 fairness in the process of securing such an agreement between the defendant and  
3 the prosecutor and that prosecutors are also bound by a plea agreement. *State v.*  
4 *Allen*, 197 Mont. 64, 645 P.2d 380 (1981). Appellant's plea of no contest was  
5 induced by promises from an agent of the State to recommend that Appellant may  
6 possess certain numbers of animals, and then another agent of the State rendered  
7 that promise meaningless by making a contrary recommendation. The State failed  
8 to meet the "strict and meticulous standards of promise and performance." *Id.*  
9 The Court sentenced Appellant to the conditions set forth by the probation officer.  
(See Transcript of Sentencing Hearing.)

10 Appellant's appellate counsel failed to address this issue in her Anders Brief.  
11 For the foregoing reasons, Appellant requests that her appointed counsel not  
12 be allowed to withdraw as counsel and address this issue in the appeal, or, in the  
13 alternative, appoint counsel that will assist Appellant in her appeal.

14 Respectfully submitted this 23<sup>rd</sup> day of April, 2010.

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17 Linda K. Kapsa  
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19 **CERTIFICATE OF SERVICE**

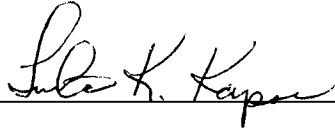
20 I hereby certify that I mailed a true and accurate copy of the foregoing  
21 document on April 23, 2010, to the following:

22 Steve Bullock  
23 Montana Attorney General  
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25 P.O. Box 201401  
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